IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3414 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CONFISEC PRINTERS - Petitioner(s)

Versus

KISHANLAL MAVJIBHAI - Respondent(s)

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Appearance :

MR DJ BHATT for Petitioner No(s).: 1.

MR RV DESAI for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 24/08/2005

ORAL JUDGMENT

1.0 The petitioner has prayed to quash and set aside the award dated 29.01.1998 passed by the Labour Court,

Ahmedabad in Reference No. 782 of 1985, whereby the petitioner was directed to reinstate the respondent with continuity of service and other benefits and 40% back wages.

2.0 The brief facts of the case are that the respondent herein was employed as a Printer by the petitioner Company. On 15.06.1984 the services of the respondent were brought to an end. Against the said order, the respondent raised a dispute, which, ultimately, culminated into a reference before the Labour Court, Ahmedabad. The Labour Court, by impugned award allowed the reference with the aforesaid directions. Hence, this petition.

3.0 Mr. D J Bhatt learned advocate for the petitioner has contended that the Labour Court has not considered the documentary evidence on record, and, more particularly, the document produced at Exh. 10/1 which clearly shows that an amount of Rs.573/- was paid to the respondent towards full and final settlement of his dues.

3.1 Mr. Bhatt has pointed out that with a view to start his own business the respondent had left the job and the

said fact is proved from the F.I.R filed by the respondent himself in which it was stated that a machine belonging to him was lost on account of theft for which complaint has been filed. He has contended that the Labour Court has also failed to consider the deposition of the respondent workman himself wherein he has specifically stated that he has received the said amount of Rs.573/- towards full and final settlement of his dues.

3.2 Mr. Bhatt has further contended that the respondent workman himself has abandoned the work and that he was not dismissed from the service. He has submitted that the Labour Court has wrongly arrived at the conclusion that the respondent was retrenched from the service. He has, therefore, submitted that the Labour Court has completely erred in concluding that there was breach of Section 25F of the Industrial Disputes Act, 1947. Hence, the impugned award of the Labour Court is required to be quashed and set aside.

4.0 While issuing Notice on 28.04.1998, this Court had stayed the impugned award of the Labour Court qua back wages only, on condition that the petitioner deposits the

amount of back wages with this Court on or before the returnable date. Further, it was stated by Mr. Bhatt that the petitioner Company shall reinstate the respondent by issuing necessary orders. The aforesaid order was complied with by the petitioner in its true spirit.

4.1 Since pursuant to the order of this Court the respondent was reinstated in service, Mr. Bhatt learned advocate for the petitioner is not pressing this petition in so far as the award of the Labour Court qua reinstatement in service is concerned since it is already exhausted, and, more particularly, when the subsequent reference for wrongful retrenchment / dismissal is pending after the said order of reinstatement.

4.2 In view of the above and in spite of the fact that the finding of the Labour Court is contrary to the evidence on record, I am of the opinion that since the respondent workman was already reinstated in service, in the interest of justice, it would not be appropriate to disturb the order of reinstatement. Hence, this Court is not disturbing the impugned award of the Labour Court qua granting of reinstatement in service is concerned. Therefore, in view of the subsequent development, the

only question which is required to be considered by this Court is with regard to grant of back wages.

5.0 Before proceeding further, it be noted that the matter was listed before this Court time and again, but, it was adjourned only with a view to see that the dispute between the parties is amicably settled. On 18.08.2005, a suggestion was put by this Court to the learned advocate for the respondent to put an end to the matter by accepting the amount that has been deposited by the petitioner pursuant to the order of this Court by way of lump sum compensation for resolving the dispute between the parties. However, the said suggestion was not acceptable to the respondent, and, hence, the matter was proceeded on merits.

6.0 Mr. R V Desai learned advocate for the respondent has contended that the respondent was terminated from the service w.e.f. 15.06.1984 and not that he had voluntarily abandoned the work. He has submitted that the Labour Court was completely justified in granting 40% back wages to the respondent.

7.0 Mr. Desai has relied upon a decision in the case of

Syed T.A. Naqshbandi & ors v. State of Jammu & Kashmir & ors reported in (2003) 9 S.C.C. pg. 592, wherein it has been held that judicial review is permissible only to the extent of finding whether the process in reaching the decision has been observed correctly and not the decision itself as such.

7.1 In my opinion, the decision relied upon by Mr. Desai shall not apply to the case on hand since the said decision pertained to Administrative Law and the scope of Judicial review. In the present case, this Court is not required to adjudicate on any administrative issue. On the contrary, the law on the subject is very clear. It is to be noted that the law on the question of the scope and ambit of the jurisdiction of this Court in the context of the powers which this Court may exercise under Article 227 of the Constitution of India is already settled by the Supreme Court. In the case of ***Surya Dev Rai Vs. Ram Chander Rai, reported in (2003) 6 SCC 675***, the Supreme Court has observed that while examining a petition under Article 227 of the Constitution of India, a writ of certiorari or the exercise of supervisory jurisdiction is not available to correct mere errors of fact or of law, unless the error

is manifest and apparent on the face of the proceedings, such as when it is based on clear ignorance or utter disregard of the provisions of law and a grave injustice or gross failure of justice has occasioned thereby. The Supreme Court further observed as under:

> "The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above said two jurisdiction is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred there against and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where refusal itself would result in prolonging of the lis."

7.3 The aforesaid principles have been reiterated by the Supreme Court in the case of ***Yashwant Sakhalkar Vs. Hirabat Kamat Mhamai, reported in (2004)6 S.C.C. pg.71***, and in the case of ***Ranjeet Singh Vs. Ravi Prakash, reported in AIR 2004 S.C. pg.3892***. Hence, it is clear

that this Court under Article 227 of the Constitution of India can given its findings on the merits of the case. Hence, the decision relied upon by Mr. Desai cannot come to the rescue of the respondent.

8.0 The next decision relied upon by Mr. Desai is in the case of ***Management of Madurantakam Co-operative Sugar Mills ltd. v. S. Viswanathan reported in 2005-II-L.L.J. pg.1***, wherein the Apex Court, while upholding the award of the Labour Court, has granted back wages and other retirement benefits to the respondent. In that case, the employee was alleged of illegal gratification and no departmental inquiry was conducted against him.

8.1 In the present case, the respondent workman himself has abandoned the work, and therefore, there is no breach of Section 25-F of the Industrial Disputes Act, 1947. Hence, in my view, the said decision also cannot come to the rescue of the respondent.

9.0 The next decision relied upon by Mr. Desai is in the case of ***A.P.S.R.T.C. v. B. Vikram Reddy reported in 2004-II-LLJ pg.1051***, wherein the employer was held liable to pay full wages for failure to reinstate the workman as

per the award.

9.1 The facts of the said case and the facts of the case on hand are different. In the present case, the respondent himself has voluntarily abandoned the work. Hence, the ratio laid down in the aforesaid decision shall not apply to the case on hand.

10.0 Another decision relied upon by Mr. Desai is in the case of ***Allahabad Jal Sansthan v. Daya Shankar Rai and another reported in (2005) 5 S.C.C. pg. 124***, wherein it has been held that a law in absolute terms cannot be laid down as to in which cases and under what circumstances, full back wages can be granted or denied. The Labour Court and / or Industrial Tribunal before which the industrial dispute has been raised, would be entitled to grant the relief having regard to the facts and circumstances of each case. For the said purpose, several factors are required to be taken into consideration. Inter alia, a pleading to the effect that he had been sitting idle or had not obtained any other employment in the interregnum must be raised by the workman seeking back wages.

10.1 In my opinion, the aforesaid decision cannot come to the rescue of the respondent since in the case on hand the respondent workman had started a business which is of a rival nature to that of the petitioner. In the case of ***General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C., pg.137 [2005(5) S.C.C. pg. 591***], it has been held that an order for payment of back wages should not be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order. Paragraphs 10, 11 & 12 read as under;

> "**10**. In Smt. Saran Kumar Gaur and others V. State of Utter Pradesh and others, this Court observed that when work is not done remuneration is not to be paid and accordingly did not make any direction for award of past salary. In State of U.P. and anr. V. Atal Behari Shastri and Anr, a termination order passed on 15.7.1970 terminating the services of a Licence Inspector was finally quashed by the High Court in a writ petition on 27.11.1991 and a direction was issued to pay the entire back salary from the date of termination till the date of his attaining superannuation. This Court, in absence of a clear finding that the employee was not gainfully employed during the relevant period, set aside the order of the High Court directing payment of entire back salary and substituted it by payment of a lump-sum amount of Rs.25,000/-. In Virender Kumar, General Manager, Northern Railways, New Delhi V. Avinash Chandra Chadha and others, there was a dispute regarding seniority and promotion to a higher post. This Court did not make any direction for payment of higher salary for the past period on the principle ?no work no 'ay? as the respondents had actually not worked on the

higher post to which they were entitled to be promoted. In Surjit Ghosh V. Chairman and Managing Director, United Commercial Bank and others, the appellant (Assistant Manager in the Bank) was dismissed from service on 28.5.1985, but his appeal was allowed by this Court on 6.2.1995 as his dismissal order was found to be suffering from an inherent defect. His claim for arrears of salary for the past period came to about Rs.20 lacs but this Court observed that a huge amount cannot be paid to anyone for doing no work and accordingly directed that a compensation amount of Rs.50000/- be paid to him in lieu of his claim for arrears of salary. In Anil Kumar Gupta V. State of Bihar, the appellants were employed as daily wage employees in Water and Land Management Institute of the Irrigation Department of Government of Bihar and they were working on the posts of steno-typist, typists, machine operators and peons, etc. This Court allowed the appeal of the workmen and directed reinstatement but specifically held that they would not be entitled to any past salary. These authorities show that an order for payment of back wages should not be passed in a mechanical manner but host of factors are to be taken into consideration before passing any order for award of back wages.

11. In the case in hand the respondent had worked for a very short period with appellant, which was less than one year. Even during this period there were breaks in service and he had been given short term appointments on daily wage basis in different capacities. The respondent is not a technically trained person, but was working on a class IV post. According to the finding of the Industrial Tribunal-cum-Labour Court plenty of work of the same nature, which the respondent was doing, was available in the District of Rohtak. In such circumstances we are of the opinion that the respondent is not entitled to payment of any back wages.

12. The appeal is accordingly partly allowed and the award of the Industrial Tribunal-cum-Labour Court insofar as it directs reinstatement with continuity of service is upheld by the award regarding payment of 50% back wages is set aside.”

11.0 In view of the above discussion, I am of the opinion that the respondent workman cannot be said to be entitled for back wages. Even otherwise, the said fact is confirmed from the document placed at Exh.10/1 wherein the respondent workman himself has stated that he has received an amount of Rs.573/- towards full and final settlement of his dues. For the sake of repetition, it be noted that the respondent himself has voluntarily left the job. Hence, the impugned award of the Labour Court qua granting 40% back wages is required to be quashed and set aside.

12.0 In the result, the petition is partly allowed. The impugned award of the Labour Court qua granting the respondent reinstatement with continuity in service is confirmed since the respondent workman was already reinstated in service and the second reference is pending; and, the award qua granting 40% back wages is quashed and set aside. Registry is directed to refund the amount deposited before this Court to the petitioner forthwith. Rule is made absolute to the aforesaid extent. Looking to the conduct of the respondent, this Court would have imposed costs on him, but, since Mr. Desai has stated that the respondent has suffered huge loss in the

business started by him, this Court is not imposing any costs on the respondent. The petition stands disposed of accordingly.

(K. S. JHAVERI, J.)

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